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Attorney for Plaintiff
KPI Bridge Oil, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KPI BRIDGE OIL, INC.,

Plaintiff,

v.

WILMINGTON TRUST COMPANY; TERAS
CARGO TRANSPORT (AMERICA) LLC;
TERAS BREAKBULK OCEAN NAVIGATION
ENTERPRISES LLC; TRUENORTH
TRANSPORT LLC,

Defendants.

IN ADMIRALTY

CASE NO.:

**EX PARTE MOTION FOR
ISSUANCE OF PROCESS OF
MARITIME ATTACHMENT AND
GARNISHMENT AND FOR
EXPEDITED CONSIDERATION**

COMES NOW Plaintiff, KPI BRIDGE OIL, INC., and files its *Ex Parte* Motion for Issuance of Process of Maritime Attachment and Garnishment and for Expedited Consideration of this motion pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure (hereinafter "Admiralty Rules"), and respectfully states as follows:

1. Supplemental Admiralty Rules B and E permit a Court to issue an order of maritime attachment if the plaintiff satisfies the filing and service requirements of Rules B and E, and can show that: "(1) Plaintiff has a valid prima facie admiralty claim against the defendant; (2) defendant cannot be found within the district; (3) property of the defendant can be found within the district; and (4) there is no statutory or maritime law bar to the attachment"

1 *Equatorial Marine Fuel Management Services Pte Ltd. v. MISC Berhad*, 591 F.3d 1208, 1210
 2 (9th Cir. 2010) (citing *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 445
 3 (2d Cir. 2006); Fed. R. Civ. P., Supp. R. B).

4 2. Plaintiff filed a Verified Complaint pursuant to Rule 9(h) of the Federal Rules
 5 of Civil Procedure and Rule B of the Admiralty Rules setting forth Plaintiff's claim for
 6 damages in the amount of USD 210,918.26, together with interest, costs and attorney fees. The
 7 allegations of Plaintiff's Verified Complaint are incorporated herein by reference.

8 3. Defendants WILMINGTON TRUST COMPANY, TERAS CARGO
 9 TRANSPORT (AMERICA) LLC, TRUENORTH TRANSPORT LLC, and TERAS
 10 BREAKBULK OCEAN NAVIGATION ENTERPRISES LLC (collectively "Defendants")
 11 cannot be found within the District of Nevada for the purposes of Rule B of the Admiralty
 12 Rules. This is demonstrated by Plaintiff's Verified Complaint and the Declaration of Attorney
 13 Briton P. Sparkman (Exhibit 9 to the Verified Complaint), filed pursuant to Rule B of the
 14 Admiralty Rules and which states, in pertinent part, that Plaintiff is informed and believes:
 15 that Defendants cannot be found within the District of Nevada; that to Plaintiff's knowledge,
 16 none of the officers of Defendants are now within the District of Nevada; that Defendants do
 17 not maintain offices or telephone listings in the District of Nevada; that Defendants are not
 18 incorporated or registered to do business in the State of Nevada; and, that Defendants do not
 19 have registered agents for the receipt of service of process in the State of Nevada.

20 4. Plaintiff is informed and believes Defendants do now, or will during the
 21 pendency of this action, have tangible and intangible personal property within the District of
 22 Nevada, and more specifically funds deposited by Defendants in bank account(s) to pay
 23 operation costs during the period in which Argent Marine Management, Inc. is the operator of
 24 the vessel, belonging to Defendants or nominees thereof, and said funds are now or will be
 25 during the pendency of this action in the District and under the jurisdiction of this Court, and
 26 the funds are property amenable to attachment and garnishment pursuant to Admiralty Rule B.

1 5. Moreover, Plaintiff is informed and believes Argent Marine Management,
2 Inc., manages and holds any bank accounts and associated funds on behalf of the Defendants
3 and it is likely that the said company has in its possession and/or control tangible or
4 intangible property of Defendants.

5 6. Furthermore, there is no statutory or maritime bar to the attachment
6 application.

7 7. The instant Rule B maritime attachment action was commenced in order
8 secure the appearance of the Defendants and to obtain security in the amount of **USD**
9 **283,678.37** (*see* Verified Complaint ¶ 42). *See* Verified Complaint, ¶¶ 8-35, 41-42; *see also*
10 *Swift & Co. Packers v. Compania Colombiana del Caribe, S.A.*, 339 U.S. 684, 693, 70 S. Ct.
11 861, 94 L. Ed. 1206 (1950)).

12 8. Additionally, Plaintiff respectfully moves this Court for expedited
13 consideration of this Motion. As set forth in Plaintiffs Verified Complaint (Doc. 1), Plaintiff
14 seeks to attach tangible and intangible property of the Defendants, including credits, debts,
15 accounts, payments, etc. presently held by garnishees. These items are easily transitory. Due
16 to the specific nature of this Rule B attachment, without a prompt issuance of Plaintiff's
17 Process of Maritime Attachment and Garnishment, the property Plaintiff seeks to attach
18 could, and likely will, be removed from the jurisdiction before the Court considers and acts
19 on Plaintiff's application. The Federal Courts have an interest in preserving the efficacy of
20 maritime attachment orders, because without it, "defendants, their ships, and their funds
21 easily could evade the enforcement of substantive rights of admiralty law." *See Yayasan*
22 *Sabah Dua Shipping SDN BHD v. Scandinavian Liquid Carriers, Ltd.*, 335 F. Supp. 2d 441,
23 445 (S.D.N.Y. 2004). Accordingly, any delay may very well deprive Plaintiff of the element
24 surprise, allowing Defendants to transfer their property out of the district and beyond the
25 reach of this Court.
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